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December 18, 2007

Honorable Frank Accavitti, Chair
House Energy and Technology Committee

Re: ABATE'S Response to Energy Legislation

Dear Chairman Accavitti:

Thank you for the opportunity for ABATE to respond to your tie-barred energy "package" (HB 5520-5525 and HB 5548-5549) which was introduced recently.

The renewable energy bills (HB 5548 & 5549) coming out of your workgroup lead by Representatives Mayes and Palsrock, show substantial progress and they should be commended. Although there are a few amendments we would still like to have considered on these bills, it appears they have substantially narrowed the areas of disagreement and overall did an excellent job with a very complicated issue. Given the short amount of time before year end, we would respectfully suggest that the committee focus on trying to finalize these two bills dealing with renewable energy supplies on their own merits, i.e., not tie-barred.

ABATE' letter of September 12, 2007 commented on four of these other bills (HB 5520, 5521, 5522, and 5524) when they were in draft form, pointed out specific problems, and identified policy changes ABATE members would like to see. ABATE requested you consider instead HB 4630 as the starting point for discussions since it better addressed many of the important energy issues and provided for better protection of the interests of both residents and job-providers by ensuring robust, stable and reasonably priced electricity. The many problems ABATE pointed out with these first four bills months ago have not been resolved in the bills as introduced, and now still more bills of concern have been added to the tie-barred package.

For example, new HB 5523 provides that a utility may implement any rate increase it has requested if the commission has not issued a final order within 90 days, and further that a utility may file one rate increase request upon another every 9 months (i.e., a/k/a/ "pancaking). It is well documented that the commission typically needs 9 months or more to issue a final order in the large utilities' complex rate increase requests. Moreover, such a system of automatic rate

increases, with less regulatory review, and legally authorized pancaking of multiple rate increase requests will likely overwhelm regulators in short order.

The new energy efficiency bill (HB 5525) also presents serious concerns by including controversial revenue "decoupling" (i.e., even though customers use less energy by being more efficient, their utility bills do **not** go down) which eliminates one of the greatest incentives to be more efficient – saving money.

In short, as the energy package has grown, it has become more controversial and less likely to protect the interests of residents and job providers by assuring reasonably priced electricity. A brief analysis of each bill is enclosed. ABATE believes most of the bills need considerable work.

Sincerely,

Roderick S. Coy, Esq.

Fritz Benson

Enclosures

SALE OF UTILITY GENERATION ASSETS
HB 5520
(04885 '07)

CURRENT SITUATION:

The MPSC's current ratemaking authority implicitly gives it the ability as a part of a general rate case to determine the reasonableness and prudence of the sale of utility power plant assets. The MPSC has utilized this authority in the past to examine asset sales and to allocate the proceeds.

PROPOSED HB 5520:

The draft bill would allow a utility to sell an existing power plant, which is currently "used", on an accelerated basis unless the MPSC finds one of a limited number of statutory reasons to disallow. The Commission's ability to secure necessary information to determine if the sale is in the best interest of the customer is severely limited and if customer choice remains in effect, the bill states the Commission "shall" approve the sale, irrespective of any concerns.

PROBLEMS WITH HB 5520:

- The bill only covers plants currently "used", so a plant could be "retired" by a utility and then sold without going through this process.
- Section 6Q. (1) is internally inconsistent in that it says that the MPSC can review any "series of transfers" but they must be "associated with a single transaction."
- The application submitted by the utility is inadequate and can essentially be controlled by the utility; certain documents only have to be provided "if available", key financial information is provided only as "a summary", a utility decides which financial statements "are relevant", and information can be declared as "confidential" and kept from public disclosure. The phrase in subsection (2)(c) "regulated electric utility service" is vague and does not coincide with one of the evaluation criteria, which is the impact on reliability.
- The 180-day time period for the Commission to issue a decision is insufficient, unless full and complete disclosure about the transaction is provided (which this bill does not do) in the beginning.
- There is a blanket mandate that the MPSC approve a sale if customers "are eligible to take retail generation service from an alternative supplier", even if they have no practical alternative available. This creates a possibility of the utility selling its assets and then meeting load by buying expensive power in the LMP market, thus unnecessarily raising rates to customers.
- The Commission is forced to approve the sale unless it finds only a limited number of statutory factors available to disapprove; this forced approval process needs to be clarified to make sure it does not impede the Commission's ratemaking authority to be fair to ratepayers.
- The bill as drafted actually weakens customer protections in current law and practice; the bill is designed to make the utilities transfer of assets quick and easy irrespective of the Commission's concerns or adverse impact on customers.

CERTIFICATE OF NEED
HB 5521
(04883 '07)

CURRENT SITUATION:

The MPSC currently does not have authority to determine whether a new power plant should be built. The MPSC does have existing authority to require electric utilities to submit one-year and five-year forecasts of their power supplies, requirements and costs. It also has authority to approve in advance power purchase agreements in excess of six months. It has the authority to include in rates the cost of new power supplies only when the power supply is serving the public.

PROPOSED HB 5521:

The bill gives an electric utility the option to seek advanced "certification" from the MPSC if it wants to construct or purchase a new power plant, make a major modification to an existing plant, or enter into a long-term purchase power agreement. The bill gives the utility a menu of benefits by assuring in advance that the cost of the new power supply will be charged to electric utility customers during and after construction, irrespective of whether it is ever "used" to serve customers. The Commission is required to make a decision within 180 days. The Commission is directed to approve the certification request under specific circumstances listed in the bill, thus requiring customers to pay for a new power supply. The Commission "may" undertake periodic reviews of a certification, but is not required to do so. If the Commission denies any relief requested by the electric utility, the electric utility may withdraw its application and proceed with the proposed supply addition anyway. The Commission is forbidden from disallowing the recovery of certain costs, and the Commission is mandated (i.e. "shall") to include even cost overruns if the electric utility merely "presents evidence" that the cost overruns were reasonable and prudent.

PROBLEMS WITH HB 5521:

- It eliminates the longstanding legal precedent that investment in supplying power to customers must be "used and useful" before being charged to customers and that construction costs must have been "reasonably and prudently incurred".
- Selective use of the terms "may" and "shall" have virtually guaranteed that the electric utility will have its requests approved, that the Commission's hands will be tied, and that electric customers must pay for a new power supply before it is "used and useful", and will be at risk for cost overruns as well.
- The Commission is virtually forced to grant the request of the utility and to charge customers years before a power plant begins to generate electricity under the bill. The 180-day timeframe for the Commission to make a decision on a power plant that will take many years to construct and will affect customers' rates for 40-50 years is too short, especially under a proposal where customers are asked to pay for the plant years before they will ever get any benefit.
- The proposed bill shifts the risk of bad or simply unlucky management decisions on to the customers and relieves the utility of responsibility for prudent construction management and cost containment.

- The bill is a actually a financing mechanism which forces residential and business customers to put up capital and gives them no return for their investment, consequently it takes needed capital away from businesses for their own needs.
- The customer becomes the risk bearer of all circumstances and the utility is guaranteed recovery and a return regardless of the circumstances.
- The proposed bill does not meet the criteria outlined in the "Proposed Energy Policy Changes" document.
- House Bill 4630 is a much more balanced and comprehensive review mechanisms for adding power supplies
- The bill does not integrate with existing law; instead it just tacks on a conflicting new section.

DE-SKEWING RATES
HB 5522
(04884 '07)

CURRENT SITUATION:

The MPSC already has authority to set electric utility rates at the cost of providing service to each customer class. Over many years the Commission has stated an intention of eliminating subsidies and setting rates based upon the cost of service, but this stated intention has not been fulfilled. At various times the amount of subsidization has increased or decreased, but unlike with gas rates where customers choice exists, electric subsidies have never been completely eliminated.

PROPOSED HB 5522:

This draft bill generally provides that the Commission shall adopt electric rates that "reflect" the cost of providing service to each customer class, but contains many broad exceptions and specifically directs the Commission to create some new subsidized rates. The bill changes existing policy by requiring other customers to pay the utility for the deficit when economic development or other subsidized rates are granted.

PROBLEMS WITH HB 5522:

- The bill does not say that the rates must actually be based upon or set at the cost of providing service, only that the rates shall "reflect" the cost of providing service.
- The Commission's obligation to adopt rates that "reflect" the cost of providing service is qualified by the greater obligation to "adopt rates that take into account cost differences based upon the time of day and season of year, the ability of a customer to shift usage from peak to off-peak periods, and the cost of interruptible service."
- Notwithstanding the general obligation to adopt electric rates that "reflect" the cost of providing service to each customer class, the Commission is specifically authorized to "phase in" cost-based rates over a period not to exceed three (3) years for primary customers and over a period not to exceed seven (7) years for secondary or residential customers.
- During any "phase in period" the proposed bill would require that any customer receiving service from an AES be penalized by paying a rate increased or decreased for any subsidy granted to a customer class from the "actual cost of service".
- Notwithstanding the requirement to adopt electric rates that reflect the cost of providing service to each customer class, the bill specifically directs the Commission to establish one or more economic incentive rate schedules or special contracts which presumably do not necessarily have to recover the cost of providing the service. Although such rates are limited to no more than 5% of the utility's primary load, the eligibility for such rates is very broad so the Utility and MPSC will pick winners and losers. Additionally, the rates were to attract "industrial and commercial facilities", but the 5% cap is based only on primary load.
- The Commission is required to charge the subsidies it does grant for economic incentive rates or special contracts to all other customers who are not eligible for the subsidies, in contrast to longstanding precedents.
- On balance it is debatable whether the bill moves rates closer to cost of service or actually legitimizes more subsidies and delays true cost based rates.

AUTOMATIC RATE INCREASES
HB 5523
(05023 '07)

CURRENT SITUATION:

When a utility requests a rate increase it must give notice in the area affected and the MPSC must hold a full and complete hearing. The utility may request "partial and immediate relief" after presenting its direct case and after the staff has made an investigation and report. For fuel and purchased power costs, as well as for gas costs, unless the MPSC issues an order to the contrary, the utility can put these requests into effect after 90 days, subject to reconciliation and possible refund 1 to 2 years later. The MPSC can use whatever test period, actual or projected, best predicts the period during which rates will actually be in effect.

PROPOSED HB 5523:

The bill would repeal the requirement to give customers notice of rate increase requests affecting them and allow the utility to automatically put into effect 100% of the utility's rate increase request if the MPSC has not acted upon the request within 90 days. The utility can use projected costs and self-implement its request after 90 days without any Commission or staff review, investigation, or report. The utility may also file a new rate increase request every 9 months.

PROBLEMS WITH HB 5523:

- It eliminates the required notice to ratepayers affected by the requested rate increase.
- It allows any rate increase requested to automatically go into effect after 90 days with no review, investigation, or report by regulators.
- It allows "pancaking" of one rate increase request upon another which will overwhelm regulators in short order and put new rate increase requests in to effect before the older requests result in any refunds.
- If the MPSC ultimately determines the request was excessive, there is no requirement the amounts be refunded to the actual customers overcharged, thus overturning legal decisions and precedents.
- Refunds with interest will take years, actual customers overcharged will not be found, and the utility can more than offset any required refunds by additional requests that automatically go into effect after 90 days.
- Customers will not know how much they are really paying for power until years after consumption, thus discouraging conservation and energy efficiency.
- The bill accelerate rate increases while reducing regulatory review of their need.
- The MPSC should not be required to use projected test periods, particularly when they are less likely to predict the circumstances existing during the period the rates are to be in effect, which simply raise rates needlessly.
- The MPSC already allows utilities working capital allowances that are built into customers rates.
- The bill transfers cash flow from business and residential customers to the utilities thus converting customers into bankers.
- The bill will result in substantial and rapid rate increases on business and residential customers.

ELIMINATION OF CUSTOMER CHOICE
HB 5524
(02552 '07)

CURRENT SITUATION:

Act 141 and its companion Act 142 allowed electric utility customers to choose their electric utility supplier, gave electric utilities a 5-year period to get competitive, moved the alleged stranded costs from the utilities' books to guaranteed payment by ratepayers and capped certain customers rates for a limited period of time. Competition was beginning to take hold until the MPSC issued orders for the utilities which made customer choice economically impractical for most customers when combined with unfavorable market changes. Competition in Michigan certainly has had some problems developing, but in its short life Michigan has avoided the major rate increases and disruption experienced in other states who restructured the electric industry differently than Michigan. Nonetheless, all acknowledge that as a result of Act 141 Michigan's electric utilities are "leaner and meaner" than they were as regulated monopolies.

PROPOSED HB 5524:

Although retaining a 90-day window for choice, the proposed bill effectively, eliminates customer choice and all the provisions that were necessary to implement it. The utilities are allowed to keep the benefits of removing alleged stranded costs from their books and placing these costs directly on the ratepayers, as well as recovering all implementation costs.

PROBLEMS WITH HB 5524:

- Electric restructuring was a compromise in which utilities, competitive power suppliers, and customers each had to make certain concessions and secure certain benefits under Act 141 and Act 142. This bill effectively eliminates customer choice, without any effort to re-examine the compromises and benefits that were the underpinnings for electric restructuring. Utilities keep all of the benefits from the 2000 restructuring, and all of the customer benefits and competitive provider benefits are eliminated.
- Utility customers must continue to pay securitization charges for another seven (7) years but the benefit they were to get for incurring that obligation (i.e. customer choice) is gone.
- Any customer (defined as a building or location, not a person) who chooses within 90 days to remain on choice loses the right to take standard tariff service.
- It will be impractical for anyone other than the incumbent utilities to provide electric power supplies, thus driving out of the state many companies who were attempting to participate in and better define an emerging competitive market for wholesale and retail electric service.
- The bill does not adequately deal with existing customer choice contracts and arrangements.
- If a choice customer every returns from choice, must pay the higher of market rate or tariff and can not ever leave again.
- The bill requires the MPSC "shall" allow recovery of restructuring costs not limited to implementation costs.
- The bill will lead to increased customer rates.

ENERGY EFFICIENCY
HB 5525
(05920 '07)

CURRENT SITUATION:

The utility or the Commission currently can undertake programs designed to make more efficient use of energy. For utility programs if the Commission deems the costs reasonable they are recoverable from ratepayers. If customers use less energy, the Commission re-examines the utilities sales level in each rate case. The Commission has also developed several mechanisms for dealing with substantial sales losses between rate cases.

PROPOSED HB 5525:

The bill requires a utility to file an energy efficiency plan and specifies target energy savings. If the plan is administered by an independent organization it must be selected by a competitive bid process. It assures utility recovery of everything it spends, "decouples" the utilities' revenues from its sales so that its revenues remain up even if sale decline from conservation (or any other reason). The bill allows the utility to receive an increased rate of return if the utility meets the target savings. The bill requires large customers to submit energy efficiency plans to the utilities, and possibly the MPSC, and charges large customers for the costs of the utilities' energy efficiency programs. Large customers must pay 10% of the utilities' energy efficiency program costs even if they have very successful energy efficiency programs already underway and get no benefit from the utility programs.

PROBLEMS WITH HB 5525:

- The bill eliminates the major incentive for conserving, namely saving money, since "decoupling" assures that the customers saving the energy do not save money.
- If "decoupling" is included as drafted, it will discourage energy efficiency and conservation.
- The utilities financial incentives are incorrectly pegged to how much they spend on the program, not how much energy they save.
- The bill requires "large customers" submit their own plans for energy efficiency projects, with substantial documentation to utilities and to the MPSC for approval.
- If the MPSC "approves" large customers' projects, the large customer may only deduct up to 90% of the rate charges paid for the utility's energy efficiency program.
- Large customers already have award winning energy efficiency programs and should not be required to pay for the utility's cost to develop programs that large customer have already done or will not likely use.
- The bill will increase customer rates unnecessarily while discouraging energy efficiency and conservation.